

REMARKS

In the non-final office action mailed September 8, 2006, claims 1-51 were pending. Claims 1-6, 17, 18, 21, 23-30, 32-34, 43-45 stand rejected for various reasons and claims 7-16, 19, 20, 22, 31, 35-42, and 46-51 have been objected to as being dependent upon a rejected base claim. Claims 1, 2, 7, 26, and 43 have been amended in this response. Claim 2 has been amended to correct an informality discovered by the Applicant. Reconsideration of the present application as amended and in view of the remarks that follow is respectfully requested.

Claim Rejections – 35 U.S.C. §102 and 35 U.S.C. §103

Claims 1-6, 17, 18, 21, and 23-25 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,693,795 to Grieshaber et al. (hereafter "the '795 reference"). Claims 26, 27, 32-34, and 43-45 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,224,545 to Cocchin et al. (hereafter "the '545 reference"). Additionally, claims 28-30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the '545 reference in view of U.S. Patent No. 6,139,493 to Koros et al. (hereafter the '493 reference).

Rejection of Independent Claim 1 and Dependent Claims 2-6, 17-18, 21, and 23-24

As indicated above, independent claim 1 has been rejected as being anticipated by the '795 reference. "[A]n invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim." Richardson v. Suzuki Motor Co. Ltd., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The claims must not be treated as "mere catalogs of separate parts, in disregard of the part-to-part relationships set forth in the claims and that give the claims their meaning." Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company et al., 730 F.2d 1452, 1459, 221 USPQ 481, 486 (Fed. Cir. 1984). As a result, a reference that coincidentally lists features of a claim without describing the claimed arrangement, relationship, and organization of such features cannot anticipate.

Independent claim 1 has been amended and recites, among other features, “an intermediate retractor assembly removably mountable to said separation instrument, said intermediate retractor assembly including a linking arm extending from said separation instrument toward said first and second retractor portions to a retractor blade, said retractor blade being transversely oriented to said linking arm and being positionable in the incision between said first and second retractor portions and wherein said linking arm includes a hook portion that is mounted to said separation instrument when said first and second retractor portions are in said second configuration..” Support for the amendment to claim 1 may be found for example, in paragraph [0106] in the publication of the present application.

The ‘795 reference does not disclose at least these features in claim 1. Specifically, the retractor illustrated in FIG. 1 of the ‘795 reference includes a third spreader arm 13 which is transversely and longitudinally positionable relative to the frame 10 when coupled with the carrier 51. However, as indicated in column 3, lines 61-67 in the specification of the ‘795 reference, “[a] wing nut 53 threadably engages the bolt 52” wherein “[t]he upper end of the bolt 52 is peened over, as seen in FIGS. 2-4, thus preventing disengagement of the wing nut 53 therefrom.” The ‘795 reference further discloses that the peened end of bolt 52 eliminates the possibility of “nut 53 becoming detached and finding its way into the patient’s wound”. Moreover, bolt 52 extends into a slot 47 including a pair of cutouts 55, with the cutouts 55 being structured to permit passage of the wing nut 52 through the slot 47 when the ears 56 of the wing nut 53 are aligned longitudinally with the slot 47. Therefore, the third spreader arm 13 is mountable to the carrier 51 with the bolts and wing nuts in the slot of third spreader arm 13. Therefore, the ‘795 reference does not disclose the features in amended claim 1 and withdrawal of the rejection of claim 1 is respectfully requested.

Additionally, each of dependent claims 2-6 and 17, 18, 21, and 23-25 is patentable for at least the reasons supporting the patentability of claim 1. Moreover, further reasons support the patentability of these claims. For example, claim 6 recites that “each of said recesses includes a keyway opening at an end of said respective engagement member to receive a stern extending between said respective engagement

arm and said foot, each of said recesses further including an enlarged receptacle in communication with said keyway opening sized and shaped to non-rotatably receive said respective foot therein.” The ‘795 reference indicates that “the sleeve portion 32 snugly embraces the shaped end 28” so one having skill in the art would recognize that the sleeve portion 32 would include a “substantially square” passage throughout that would engage with the “substantially square” free end 28. Therefore, the Applicant respectfully submits that sleeve portion 32 of the flesh engaging element 31 does not include a keyway and an enlarged receptacle. Claim 18 is directed to “a second intermediate retractor assembly engageable with said intermediate retractor assembly”. The Applicant respectfully submits that the ‘795 reference fails to disclose a second intermediate retractor assembly and therefore claim 18 is patentably distinguishable thereover. Furthermore, claim 23 recites that “each of said first and second retractor portions includes a semi-cylindrical body.” The ‘795 reference does not disclose that either of blades 34, 41 includes a semi-cylindrical body. Moreover, claim 24 recites, among other features, that “a working channel between said first and second retractor portions is enclosed when said opposite edges” are adjacent one another. When blades 34, 41 of the ‘795 reference are brought together, they either first contact one another at a top edge or contact one another along their entire length, both of which eliminate the possibility of a working channel being formed therebetween. Therefore, claim 24 distinguishes the ‘795 reference and is allowable.

As indicated above, claim 7 has been rewritten in independent form and now includes the limitations of the rejected base claim and all intervening claims. Therefore, as set forth in the Office Action, claim 7 and claims 8-16 depending therefrom are allowable.

Rejection of Independent Claim 26 and Dependent Claims 27-30 and 32-34

As indicated above, independent claim 26 has been rejected as being anticipated by the ‘545 reference. Independent claim 26 has been amended and recites, among other features, “a separation instrument coupled between said proximal ends of said first and second retractor portions and extending away from said proximal ends to one side of said

first axis, said separation instrument being operable to move said first and second retractor portions away from one another along said first axis". Support for the amendment to claim 26 may be found, for example, in FIGS. 17-21 and 25 and paragraph [0092].

The '545 reference discloses a surgical retractor 10 including a pair of retractor blades 91, 92 which are movable by the combination of a thread assembly 20 and a rack assembly 50. Moreover, the rack assembly 50 has a substantial U-shape formed by a pair of legs 52, 54 and a crosspiece 58 extending transversely therebetween. The rack assembly 50 further includes a swivel assembly 70 which includes a first swivel 72 and blade mount 84, each of which is structured to receive one of the respective blades 91, 92. When first swivel 72 is engaged with the rack assembly 50 and the blades are subsequently engaged therewith, the surgical retractor 10 completely surrounds the blades 91, 92. The '545 reference fails to disclose a separation instrument extending away from the proximal ends of the blades to one side of any first axis extending between blades 91, 92. Thus, claim 26 distinguishes the '545 reference and is allowable. Accordingly, withdrawal of the rejection of claim 26 is respectfully requested. Additionally, each of dependent claims 27 and 32-34 are patentable for at least the reasons supporting the patentability of claim 26.

Moreover, in regard to the 35 U.S.C. § 103(a) rejection of claims 28-30 as being unpatentable over the '545 reference in view of the '493 reference, the Applicant submits that in order for an obviousness rejection to be proper, the combination of prior art references must teach or suggest all the claim limitations. MPEP §2142 (*citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). The features of claim 26 which are novel over the '545 reference as indicated above are also not taught or suggested by the '493 reference. Therefore, the combination of references fails to teach or suggest all of the claim limitations of claims 28-30, which depend indirectly from claim 26.

Furthermore, claim 28 is directed to "a first intermediate retractor assembly mountable to said separation instrument". Likewise, the '493 reference discloses a retractor 10 and a distractor 12 but fails to teach or suggest either of the retractor 10 or distractor 12 being mountable to each other. Furthermore, as illustrated in FIGS. 1, 3 and

7, arm 20 of distractor 12 lays over arm 22 of retractor 10 and that neither is mountable to the other. Furthermore, claim 30 is directed to a second intermediate retractor assembly including "a second linking arm coupled to said linking arm of said first intermediate retractor assembly and extending to said second retractor blade." As illustrated in FIG. 1 for example, arms 18 and 22 of retractor 10 are coupled with frame 14 and arms 20 and 24 of distractor 12 are coupled with frame 16, with no suggestion that any of the arms 18, 20, 22, 24 may be coupled to one another. Therefore, the Applicant respectfully submits that the combination of references further fails to teach or suggest all of the claim limitations of at least claims 28-30, and withdrawal of this basis of the rejection is respectfully requested.

Rejection of Independent Claim 43 and Dependent Claims 44-45

As indicated above, independent claim 43 has been rejected as being anticipated by the '545 reference. Independent claim 43 has been amended and recites, among other features, "a separation instrument coupled between said proximal ends of said first and second retractor portions and extending away from said proximal ends to one side of said first axis". Support for the amendment to claim 43 may be found, for example, in FIGS. 17-21 and 25 and paragraph [0092].

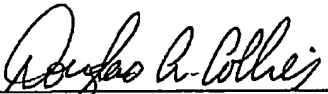
In contrast to the indicated features of claim 43, the Applicant respectfully submits that the '545 reference does not disclose a separation instrument arranged as recited in claim 43. As set forth above in regard to claim 26, the '545 reference teaches a surgical retractor 10 including a pair of retractor blades 91, 92 which are movable by the combination of a thread assembly 20 and a rack assembly 50. Moreover, the rack assembly 50 has a substantial U-shape formed by a pair of legs 52, 54 and a crosspiece 58 extending transversely therebetween. The rack assembly 50 further includes a swivel assembly 70 which includes a first swivel 72 and blade mount 84, each of which is structured to receive one of the respective blades 91, 92. When first swivel 72 is engaged with the rack assembly 50 and the blades are subsequently engaged therewith, the surgical retractor 10 completely surrounds the blades 91, 92. The '545 reference fails to disclose a separation instrument extending away from the proximal ends of the blades to

one side of any first axis extending between blades 91, 92. Accordingly, withdrawal of the rejection of claim 43 is respectfully requested. Additionally, each of dependent claims 44-45 is patentable for at least the reasons supporting the patentability of claim 43.

CONCLUSION

In view of the above amendments and remarks, the present application is believed in condition for allowance. Reconsideration of the present application as amended and including claims 1-51 is respectfully requested. A notice of allowance is hereby solicited. The examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted:

By: 
Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2079
Phone: (317) 238-6333 (Direct)

Response to Office Action
Ser. No. 10/792,358
Atty Docket No. MSDI-90/PC689.02
Page 19 of 19